

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

EASY SPIRIT, LLC,

Plaintiff,

v.

Case No. 1:19-cv-03299-WHP

SKECHERS U.S.A., INC. and  
SKECHERS U.S.A., INC. II,

Defendants.

**DECLARATION OF JESSICA BARUCH**

Pursuant to Rules 803(6) and 902(11) of the Federal Rules of Evidence and subject to the penalties for perjury under 28 U.S.C. § 1746, I, Jessica Baruch, hereby certify, to the best of my knowledge, information, and belief, the following:

1. My name is Jessica Baruch. I am of legal age and under no legal disability. If called as a witness in this matter, I could and would testify under oath to the facts set forth below.

2. I am currently Senior Director of Merchandising and Product Development at Skechers U.S.A., Inc. I am qualified as a result of my position with Skechers to speak to Skechers' current and past development and design practices, current and past records and materials, and record keeping practices.

3. I understand that documents, including emails and attachments, were produced in this case from Skechers' email system. Skechers, through its employees, regularly and routinely creates emails and other records as part of Skechers' regularly conducted business. These emails and other records are made at or near the occurrence of the relevant matters discussed therein, or based on information transmitted by someone with knowledge. Skechers employs an email system that regularly and routinely keeps copies of these records as part of Skechers' business. Skechers also employs file storage systems to regularly and routinely keep copies of records as part of Skechers' regularly conducted business. The records discussed below in paragraphs 10-through 13 were so created and so kept.

4. In my role at Skechers, I am responsible for managing designers, product managers and merchandisers to develop and market certain Skechers product lines. I currently manage five product divisions for Skechers, including Modern Comfort, Modern Comfort Sandals, Modern Comfort Boots, Cali, and Active. All of these divisions offer various styles of women's shoes. For these divisions, I am person that is ultimately responsible for the design and introduction of new shoe styles in these divisions, for determining which styles are continued to be offered in these divisions, and for setting wholesale pricing for shoes offered in these divisions.

5. Skechers is an award-winning global brand with a focus on lifestyle and performance footwear products.

6. I made the decision to offer a new open back shoe design in the Modern Comfort division, which ultimately became the Skechers Commute Time shoe. I and my team met with Savva Teteriatnikov, one of Skechers' lead designers, in early 2017, and I specifically requested that he design a new open back style using the Skechers D'Lite shoe style as the inspiration. The

Skechers D'Lite is a very popular shoe family for Skechers, with various individual styles offered in different shoe divisions. For example, the Women's Sport division offered an open back D'Lites shoe that was very popular. A true and correct copy of an image of a Skechers D'Lites shoe is depicted below, excerpted from of the "Skechers Spring 2008" catalog, excerpts of which are attached as Exhibit AG (SKNY0096670-SKNY0096692) to the Welch Declaration ("Welch Dec.").



7. I wanted to provide a D'Lites shoe offering for the Modern Comfort division, including using the signature D'Lite jewels, or "chicklets," in the heel portion of the design in order to tie it to the other D'Lites shoe offerings throughout Skechers, and help promote the new shoe.

8. Melissa Hobbs was a Product Manager who reported to me from at least early 2017 to 2020. She was responsible for coming up with the Commute name for the new shoe design, and I approved the adoption of that name. When I approved the adoption of the Commute name, I was not thinking of Easy Spirit's Travelttime name, and did not approve the Commute name based on anything to do with Easy Spirit.

9. The Skechers Commute launched in early February 2018.

10. The name of the shoe was changed from "Commute" to "Commute Time" after it was launched. The changed was first made on Skechers website, on September 25, 2018.

Attached as Exhibit F (SKNY0045181-SKNY0045184) and Exhibit G (SKNY0043754) to the Welch Dec. are true and correct copies of emails discussing that initial change. The box for the shoe was changed on or around April 1, 2019. Attached as Exhibit H (SKNY0048189-SKNY0048190) to the Welch Dec. is a true and correct copy of emails reflecting the updated packaging information for a Skechers Commute Time shoe. Those updated boxes bearing the Skechers Commute Time mark did not ship until June 25, 2019.

11. The new name “Commute Time” was sent to legal for approval prior to the switch from Commute. Attached as Exhibit U (SKNY0131127) to the Welch Dec. are true and correct copies of an email regarding that request.

12. Attached as Exhibit S (SKNY-SP001-1 through SKNY-SP001-7) to the Welch Dec. are two true and correct images of the Skechers shoe box used for all of the Skechers Commute and many of the Skechers Commute Time shoes, as well as images of the Skechers Commute Time shoe. As seen in the images depicted below, the Skechers Commute Time shoes are sold in boxes that prominently feature the house brand, “Skechers,” and the SKECHERS trademark. The box only shows “Skechers Commute Time” on the small UPC labels on the side of the box.



13. Skechers offers a few, newer Skechers Commute Time Styles in a Skechers Commute Time box. This box was not shipped until June 25, 2019. An image of this box lid design is below. Attached as Exhibit I (SKNY0058893) to Welch Dec. is a true and correct depiction of that box.



14. The box is the only place a customer will see the “Commute Time” name at the Skechers retail store point of sale. At some concepts, the box is only seen after the shoe is purchased.

15. When the Skechers Commute or Skechers Commute Time is offered for sale on Skechers’ eCommerce website, [skechers.com](http://skechers.com), the Skechers Commute and Skechers Commute Time are sold under the heading banner reading SKECHERS.

16. It is my understanding that third-party retailers, such as DSW and Macy’s, do not do any point-of-sale advertising for the Skechers Commute Time shoe beyond what is available on their eCommerce pages, and do not even display the name “Commute Time” on the store shelf. Relying on the Skechers name better positions the shoe as part of the Skechers family.

17. Many of Skechers’ wholesale customers also use the famous SKECHERS mark in conjunction with the COMMUTE and COMMUTE TIME marks when offering the shoes for sale via their own respective eCommerce websites, including [Kohls.com](http://Kohls.com), [DSW.com](http://DSW.com), [QVC.com](http://QVC.com),

Shoesensation.com, Amazon.com, Zappos.com, and Bealls.com. I am aware that some of our third party retail customers have not updated their eCommerce sites to reflect the new Skechers Commute Time name, and continue to use the Skechers Commute name.

18. Like most Skechers shoes, it was important to brand our new Modern Comfort open back offering as a “Skechers” shoe. As depicted below, we prominently display the “Skechers” house brand on the shoes themselves in various places, such as on the top front of the upper, on the back of the heel, and in the foot bed. We also use the Skechers “S” design logo on the bottom of the outsole. Depending on the specific style of Skechers Commute Time, we may not include the Skechers house brand in all of the same places, but it appears at least one time, if not two or three times, on every Skechers Commute Time shoe. We purposefully did not put the Commute or Commute Time name on the shoe, as we wanted the shoe to be placed and promoted as part of the Skechers family of footwear.

19. Attached as Exhibit S (SKNY-SP001-1 - SKNY-SP001-7) to the Welch Dec. are true and correct photographs of a Skechers Commute Time box and Skechers Commute Time shoe showing the placement of the SKECHERS mark and “S” design logo, excerpted below. Certain Skechers Commute Time shoes, such as the Skechers Commute Time Rideshare, do not bear the SKECHERS name on all of these locations.







20. When promoting or offering the shoe to customers, we always refer to the shoe as the “Skechers” Commute Time, not just the “Commute Time,” as it is very important that our customers know it is a Skechers shoe.


21. We do not market or advertise the Skechers Commute Time shoe in any form or fashion. We have done no point of sale advertising, television or print advertising, and no social media promotion or advertising. The Skechers Commute Time is one of the smaller lines offered in the Modern Comfort division, and is a relatively unimportant shoe for us, so it has not been worth the advertising or marketing expense.

22. The Skechers Commute Time is offered for sale directly by Skechers, either through its ecommerce website at [www.skechers.com](http://www.skechers.com) or in Skechers’ own retail stores. The Skechers Commute Time is also sold through third-party retailers, both online and in their retail stores, such as Amazon.com, Zappos.com, DSW, Macy’s, Kohl’s, Wal-Mart, and many others.

23. The average customer for Skechers Modern Comfort shoes, including the Skechers Commute Time, is a sophisticated woman, aged 40 to 60, who is interested in stylish yet comfortable footwear. In my experience designing and offering shoes for that market, and meeting and discussing shoes with Skechers retail account customers (like DSW and other national retailers), purchasers of Skechers Modern Comfort shoes are discerning and thoughtful in making their purchase decisions. With a retail price point of \$35.00 to \$60.00, Skechers Modern Comfort shoes are not inexpensive, and are not considered an impulse purchase by our consumers.

24. To date, Skechers is aware of no instances of confusion between the two shoes by any parties, including customers.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 18 day of August, 2020, in Calver City, California.

  
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Jessica Baruch

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